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Supreme Court, U.S.
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No. 94-9247

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

CHARLES CARLISLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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Petitioner contends that the court of appeals erred in reversing the order of the district court granting a post-verdict judgment of acquittal.

Petitioner was indicted by a grand jury sitting in the United States District Court for the Western District of Michigan. He was charged with conspiracy to possess marijuana with intent to distribute it, in violation of 21 U.S.C 846. Following a jury trial, petitioner was found guilty as charged.

Petitioner filed a motion for judgment of acquittal on July 23, 1993, one day beyond the seven-day period allowed for such motions under Fed. R. Crim. P. 29(c). The district court denied the motion on August 24, 1993. When petitioner appeared for sentencing on October 14, 1993, the court on its own motion

reversed its earlier decision and granted a judgment of acquittal.

In a written opinion issued on October 28, 1993, the district court considered the motion for judgment of acquittal as if it were timely filed because Rule 29(c) permits an extension of the deadline for filing such motions. The court concluded that refusal to hear the motion would result in grave injustice, because the evidence was insufficient to establish that petitioner joined the conspiracy charged. Pet. App. A1-A5.

The court of appeals reversed. Pet. App. B1-B4. Relying on its decision in United States v. Davis, 992 F.2d 635 (6th Cir.), cert. denied, 114 S. Ct. 265 (1993), the court held that the district court lacked jurisdiction to grant an untimely motion for acquittal under Fed. R. Crim. P. 29. Pet. App. B3-B4.

Petitioner contends (Pet. 3-6) that a district court has jurisdiction under Fed. R. Crim. P. 29(c) to grant an untimely motion for a judgment of acquittal. Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision is not a final judgment against petitioner. After imposition of sentence by the district court, petitioner can again take an appeal to the court of appeals raising any sentencing issues that may be available to him and preserving the claim he has raised here. If the court of appeals affirms the final judgment against him, petitioner will then be able to present his current contention to this Court, together with any other claims he may have, in a petition for a

writ of certiorari. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

JUNE 1995

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.